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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/061,998	01/31/2002	James R. Mayne	3086/1285 (BH 2084)	9136
28533	7590	10/03/2003	EXAMINER	
BRINKS, HOFER, GILSON & LIONE IN RE: ALTICOR INC. P.O. BOX 10395 CHICAGO, IL 60610			WARE, DEBORAH K	
			ART UNIT	PAPER NUMBER
			1651	

DATE MAILED: 10/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/061,998

Applicant(s)

MAYNE ET AL.

Examiner

Deborah K. Ware

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) ☐ Other: _____

DETAILED ACTION

Claims 1-20 are presented for examination on the merits.

Information Disclosure Statement and Miscellaneous Papers/Requests

All IDSs (Information Disclosure Statements) and other papers have been received. Applicants may phone the examiner to make any inquiries about these papers if there are questions. The IDS references have been considered as indicated on enclosed PTO-1449 Forms.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 13 is rendered vague and indefinite for failing to set forth proper antecedent basis for "the stearyl glycyrrhetinate" and it is suggested to make the claim depend from claim 7 and not claim 8 to remedy this rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 , 8 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by the Japanese Abstract (a translation of the entire document is being requested by the examiner and Applicants may receive a copy if requested via phone request to the examiner and upon receipt by the examiner a faxed copy of the translation can be provided but only upon request or in the next action, however, it is only the English abstract which is being cited against the claims) .

Claims are drawn to a composition comprising linseed extract (10 wt%) and licorice extract. Licorice is also known as Glycyrrhiza (0.00001 to 3 wt%).

The cited JP extract teaches to a composition comprising linseed extract (10 wt%) and licorice extract. Licorice is also known as Glycyrrhiza (0.1-2 wt%).

The claims appear to be identical to the cited disclosure and are therefore considered to be anticipated by the teachings of the cited reference.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 3-7, 9-10, 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP Patent, cited above and on enclosed PTO-892 Form, in view of .63280006 JP abstract, cited on enclosed PTO-1449 Forms.

Claims are drawn to a composition comprising amounts of linseed extract and licorice extract in varied percentage amounts and further including other forms of the licorice extracts, such as glycyrrhizic acid and stearyl glycyrrhetinate.

JP is discussed above.

JP abstract, cited above and on PTO-1449 Form, in this 103 rejection teaches compositions comprising linolenic acid and licorice extracts selected from stearyl glycyrrhetinate, see the abstract.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine the teachings of the cited prior art and provide for varied weight percentage amounts of each ingredient. The composition is clearly disclosed to have anti-inflammatory properties and useful therefore. To select for various derivatives of the extracts is clearly known as well as disclosed by the art. Furthermore, to vary the selections to include derivatives of them would have been expected to provide successful results. Plant extracts would have been further expected to include bioflavonoids in the composition as these are biochemical entities of the plants, themselves. To select for other varied percentage amounts of extracts

and combinations thereof as disclosed in the prior art is prima facie obvious over the cited prior art. There is a clear teaching or at least suggestion in the art that combination of plant extracts provides successful results for anti-inflammatory compositions. Each of the plants extracts are known to have this effect and their combination in varied percentage weight amounts is an obvious modification of the cited prior art.

Claims 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP abstract in view of JP abstract, both cited above.

Claims are drawn to a method of reducing inflammation via applying topically the composition discussed above.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine the above cited JP abstracts to provide for a method of reducing inflammation comprising applying topically a composition comprising a linseed extract and licorice extract. One of skill would have expected successful results since each are well recognized in the prior art as having antiinflammatory properties. JP 63280006 clearly teach that such compositions are applied topically and hence are expected to provide successful results at sites of inflammation. To vary effective amounts of a composition is well within the purview of an artisan. The licorice extract choices are well known as taught by the cited prior art. Thus, the claims are prima facie obvious over the cited prior art.

All claims fail to be patentably distinguishable over the state of the art discussed above and cited on the enclosed PTO-892 and/or PTO-1449. Therefore, the claims are properly rejected.


The remaining references listed on the enclosed PTO-892 and/or PTO-1449 are cited to further show the state of the art.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah K. Ware whose telephone number is 308-4245. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 308-4743. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-0196.


DEBORAH K. WARE
PATENT EXAMINER

Deborah K. Ware
September 30, 2003